
**SUPPLEMENTAL MATERIAL
DECEMBER 8, 2004
CITY COMMISSION MEETING**

SUPPLEMENTAL MATERIAL

C7 - Resolutions

- C7C A Resolution Setting The First Public Hearing, In Accordance With The Requirements Of Sections 163.3220 - 163.3243, Florida Statutes, Also Referred To As The Florida Local Government Development Agreement Act, On Wednesday, January 12, 2005, To Consider Approving, On First Reading, A Proposed Development Agreement Between The City Of Miami Beach And AR&J SOBE, Llc (A/K/A Potamkin/Berkowitz) For The Development Of The Project, Presently Referred To As "5th And Alton," Containing Approximately 179,000 Square Feet Of Retail Area And A Supermarket; An Approximate 1070 Space Parking Garage; Park-And-Ride Transit Facility, Including An Intermodal/Transportation Component, And Surrounding Streetscape And Public Infrastructure To Serve The Project, Bounded By Lenox Avenue On East, Alton Road On West, 6th Street On North And 5th Street On The South, In Miami Beach.

(City Manager's Office)
(Resolution)

R7 - Resolutions

- R7F A Resolution Following A Duly Noticed Public Hearing, Approving On First Reading, In Accordance With The Requirements Of Sections 163.3220 - 163.3243, Florida Statutes, Also Referred To As The "Florida Local Government Development Agreement Act," A First Addendum To The Development Agreement Between The City Of Miami Beach And The New World Symphony, Dated January 5, 2004, For The Development Of A Portion Of The Surface Parking Lot, Bounded By 17th Street To The North, North Lincoln Lane To The South, Washington Avenue To The East And Pennsylvania Avenue To The West, For Construction Of An Approximately 50,000 Square Foot Educational, Performance And Internet Broadcast Facility With An Exterior Screen ("Soundspace"), And An Approximately 320-Space (+/-) Public Parking Garage Facility; Said Addendum Specifically Amending The Development Agreement, And Authorizing The Developer To Proceed With The Design And Development Of The Park Project Comprising Of: Zone 1, Comprising The Park And Drexel Avenue Between North Lincoln Lane And 17th Street, At The City's Cost And Expense, Not To Exceed \$10,000,000; Zone 2, Comprising The Jackie Gleason Theater Of The Performing Arts (TOPA) Entry Landscaping At The City's Cost And Expense, Not To Exceed \$1,150,000; And Zone 3, Comprising North Lincoln Lane Improvements, At The City's Cost And Expense, Not To Exceed \$500,000; And Further Setting The Second Public Hearing On January 12, 2005.

(Economic Development)
(Resolution & Agreement)

R7 - Resolutions (Continued)

R7G A Resolution Approving A Labor Agreement Between The City And The American Federation Of State, County And Municipal Employees' Union (AFSCME), Local No. 1554, For The Period From May 1, 2004, Through April 30, 2007, And Authorizing The Mayor And City Clerk To Execute The Agreement.

(Labor Relations)
(Agreement)

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING THE FIRST PUBLIC HEARING, IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 163.3220 - 163.3243, FLORIDA STATUTES, ALSO REFERRED TO AS THE FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT, ON WEDNESDAY, JANUARY 12, 2005, TO CONSIDER APPROVING, ON FIRST READING, A PROPOSED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND AR&J SOBE, LLC (a/k/a POTAMKIN/BERKOWITZ) FOR THE DEVELOPMENT OF THE PROJECT, PRESENTLY REFERRED TO AS "5TH AND ALTON", CONTAINING APPROXIMATELY 179,000 SQUARE FEET OF RETAIL AREA AND A SUPERMARKET; AN APPROXIMATE 1070 SPACE PARKING GARAGE; PARK-AND-RIDE TRANSIT FACILITY, INCLUDING AN INTERMODAL/ TRANSPORTATION COMPONENT, AND SURROUNDING STREETScape AND PUBLIC INFRASTRUCTURE TO SERVE THE PROJECT, BOUNDED BY LENOX AVENUE ON EAST, ALTON ROAD ON WEST, 6th STREET ON NORTH AND 5th STREET ON THE SOUTH, IN MIAMI BEACH.

WHEREAS, on June 7, 2000, the Mayor and City Commission adopted Resolution No. 2000-23963, designating the area bounded by 6th Street to the North, 5th Street to the South, Alton Road to the West and Lenox Avenue to the East, as a Brownfield area to promote the environmental restoration and economic redevelopment of the area; and

WHEREAS, since July 2002, the Administration has been meeting with representatives of the site generally located on 5th Street and Alton Road, owned by the Potamkin family, to address a joint development opportunity and to review a preliminary site plan for a five (5) level mixed-use retail complex, including over 900 parking spaces and a supermarket (the Project); and

WHEREAS, in accordance with the City Commission's directive and the community's identified needs, the City's interest in the Project's development was primarily focused on achieving the public benefit of locating a supermarket, exploring transit and excess parking opportunities, and developing a gateway project at one of the City's main arterial entryways; and

WHEREAS, over the past two (2) years, the Project has been reviewed on several occasions by various City Committees including Finance & Citywide Projects Committee, Transportation and Parking Committee, Design Review Board and Historic Preservation Board; and

WHEREAS, with the recommendations from these meetings, the parties have reached agreement on a majority of the substantive terms and conditions that would govern the City's joint participation, including the identification of Federal Transit Administration (FTA) funding, as the primary source for the City's capital contribution to the

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project; and

WHEREAS, on April 5, 2004, the Developer and its Project team and City staff met with the FTA in Atlanta to review FTA funding requirements; the FTA expressed favorable comments in its initial review of the Project and indicated the City would need to place emphasis on the transit elements of the Project, focusing on their location, cost and use, and transit user profiles to determine the Project's eligibility for FTA funding; and

WHEREAS, in addition, as reported in May 2005 to the City Commission, the City and Developer have continued to address other issues including: Floor Area Ratio (FAR), Alley Vacation, Park and Ride Transit Facility components, Art in Public Places, Planning Board – Conditional Use, FTA funding eligibility and rising construction costs; and

WHEREAS, as part of the ongoing negotiations, many areas of uncertainty continued to arise, affecting the ongoing Project negotiations; namely: (1) the FTA requirements and pending approval by FTA, and (2) the rising cost of construction, and its impact on the City's contribution to the Project; and

WHEREAS, these issues were discussed by the Finance Committee on October 26, 2004, and resolved as set forth below:

- **FTA:** Since the outcome of the FTA funding eligibility will not be confirmed until sometime in the future, the Developer is facing timing constraints to determine whether or not to proceed with the City, or independently, in the proposed Project. The Finance Committee recommended the City would commit to proceed with the Project irrespective of FTA funding eligibility. In other words, if FTA deems the project is not wholly or in part eligible, the City will be committing non FTA funding, preferably South Pointe RDA funds, in order to guarantee the City's participation in the Project from the onset;
- **Construction Cost Estimates:** As to the rising cost of construction, on August 25, 2004 and September 14, 2004, the Developer submitted a take-off analysis of the estimated construction cost of the parking component of the proposed Project, which was prepared by the Developer's consultant Moss and Associates. The Developer also conducted an area analysis and calculated a percentage cost per square foot, which yielded a higher value for the garage. The Developer's analysis reflected a revised construction cost estimate of \$20,741/per space (based on percentage allocation) and \$18,025/per space based on the Moss Take-off analysis;

The City had previously negotiated a \$14,500/per space cost contribution to the project, which represented a \$7,250,000 capital contribution based on 500 spaces. The new cost estimates submitted by the Developer represent an over 24-43% increase in the City anticipated contribution to the project;

The City engaged URS to review and perform an independent analysis of the Moss and Associates Take-off analysis submitted by the Developer and of the construction costs submitted. As a result, URS submitted revised construction cost estimates and reallocations, as deemed necessary, and URS determined the per space cost, without any alteration to the proposed project design, would be

approximately \$16,262/per space; and

WHEREAS, the Finance Committee discussed the reality of rising construction costs and felt it was appropriate to modify the City's capital cost contribution accordingly, due to the Developer's guarantee to assume any construction cost overruns; and

WHEREAS, the rise in costs is mitigated by the Developer's guarantee to assume the construction risk associated with any future cost increases or construction change orders not dictated by the City and/or any FTA requirement; and

WHEREAS, based on the revised construction cost estimates and Developer guarantee, the Finance Committee recommended committing to the revised City capital contribution to the project of \$9,500,000 as cited above; and

WHEREAS, accordingly, the Administration would recommend that the Mayor and City Commission set the public hearing to consider the aforesated Development Agreement, on First Reading.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the First Public Hearing be set, in accordance with the requirements of Sections 163.3220 - 163.3243, Florida Statutes, also referred to as the Florida Local Government Development Agreement Act, on Wednesday, January 12, 2005, to be held in the City Commission Chambers located at 1700 Convention Center Drive, Third Floor, Miami Beach, FL 33139, to consider approving, on First Reading, a proposed Development Agreement between the City of Miami Beach and AR&J Sobe, LLC (A/K/A Potamkin/Berkowitz) for the Development of the Project, presently referred to as "5th and Alton", containing approximately 179,000 square feet of retail area and a supermarket; an approximate 1070 space parking garage; park-and-ride transit facility, including an intermodal/transportation component, and surrounding streetscape and public infrastructure to serve the project, bounded by Lenox Avenue on East, Alton Road on West, 6th Street on North and 5th Street on the South, in Miami Beach.

PASSED AND ADOPTED this _____ day of December, 2004.

ATTEST:


CITY CLERK

MAYOR

JMG/CMC/rar

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**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**


City Attorney

12-03-04
Date

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY NOTICED PUBLIC HEARING, APPROVING ON FIRST READING, IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 163.3220 – 163.3243, FLORIDA STATUTES, ALSO REFERRED TO AS THE “FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT,” A FIRST ADDENDUM TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND THE NEW WORLD SYMPHONY, DATED JANUARY 5, 2004, FOR THE DEVELOPMENT OF A PORTION OF THE SURFACE PARKING LOT, BOUNDED BY 17TH STREET TO THE NORTH, NORTH LINCOLN LANE TO THE SOUTH, WASHINGTON AVENUE TO THE EAST AND PENNSYLVANIA AVENUE TO THE WEST, FOR CONSTRUCTION OF AN APPROXIMATELY 50,000 SQUARE FOOT EDUCATIONAL, PERFORMANCE AND INTERNET BROADCAST FACILITY WITH AN EXTERIOR SCREEN (“SOUNDSPEACE”), AND AN APPROXIMATELY 320-SPACE (+/-) PUBLIC PARKING GARAGE FACILITY; SAID ADDENDUM SPECIFICALLY AMENDING THE DEVELOPMENT AGREEMENT, AND AUTHORIZING THE DEVELOPER TO PROCEED WITH THE DESIGN AND DEVELOPMENT OF THE PARK PROJECT COMPROMISING OF: ZONE 1, COMPRISING THE PARK AND DREXEL AVENUE BETWEEN NORTH LINCOLN LANE AND 17TH STREET, AT THE CITY’S COST AND EXPENSE, NOT TO EXCEED \$10,000,000; ZONE 2, COMPRISING THE JACKIE GLEASON THEATER OF THE PERFORMING ARTS (TOPA) ENTRY LANDSCAPING AT THE CITY’S COST AND EXPENSE, NOT TO EXCEED \$1,150,000; AND ZONE 3, COMPRISING NORTH LINCOLN LANE IMPROVEMENTS, AT THE CITY’S COST AND EXPENSE, NOT TO EXCEED \$500,000; AND FURTHER SETTING THE SECOND PUBLIC HEARING ON JANUARY 12, 2005.

WHEREAS, pursuant to Section 2.2 of the Development Agreement between the City of Miami Beach and the New World Symphony (NWS), dated January 5, 2004, NWS submitted four Project Concept Plan alternatives for its “Sound Space” Project which were reviewed by the Administration on March 29, 2004, and subsequently by the Planning Board on May 25, 2004 and August 24, 2004; and

WHEREAS, pursuant to the Development Agreement, the City may develop a Park or other similar public amenity at its sole cost and expense; and

WHEREAS, on September 8, 2004, the Mayor and City Commission adopted Resolution No. 2004-25681, approving Concept Plan #4 as presented by NWS; referred the issue of the Park design to the Finance and Citywide Projects Committee; requested the Design Review Board to do a preliminary design review and send it back to City

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Commission for review and approval; and addressing the parking space issue; and

WHEREAS, pursuant to the direction of the City Commission on September 8, 2004, and consistent with the Planning Board's August 24, 2004 recommendation that the entire two (2) blocks, including the Park, be designed as an integrated site, the Project's Architectural Consultant, Gehry Partners LLP (Gehry Partners) was asked to submit a preliminary proposal and cost estimate to undertake design services for the proposed Park; and

WHEREAS, Gehry Partners submitted preliminary proposal and cost estimate for the Park for review by the Finance and Citywide Projects Committee at its meeting on October 26, 2004; and

WHEREAS, as a basis for preparing the cost estimate, Gehry Partners developed a site plan, dividing the 17th Street surface lots (the "Site") and the immediate area surrounding the Site into a series of seven zones, in order to come up with add-alternate pricing for the City's consideration.

WHEREAS, the proposal comprises add-alternate pricing for Zone 1, comprising of the Park, Drexel Avenue, between North Lincoln Lane and 17th Street, and garage site improvements; Zone 2, comprising the area adjacent to the Jackie Gleason Theater of the Performing Arts (TOPA); and Zone 3, encompassing North Lincoln Lane (collectively, the Park Project); and

WHEREAS, the total cost (in 2008 dollars) for Zone 1, comprising the Park, Drexel Avenue between North Lincoln Lane and 17th Street and garage site improvements, has been estimated at \$10 Million; Zone 2, comprising TOPA's entry landscaping has been estimated at \$1,150,000; and Zone 3, comprising North Lincoln Lane improvements, at \$500,000; and

WHEREAS, the City Manager emphasized the fact that even though Gehry Partners would be retained by NWS, the City shall retain approval over the design of the Park Project; and

WHEREAS, the NWS has committed to using a Basis of Design (BODR) process, to include community design workshops in developing its plans for the Park Project; and

WHEREAS, the Finance Committee recommended an amendment to the Development Agreement to expand the scope to include the development, design, and construction of the Park Project, using the aforesaid not to exceed amounts as the preliminary budget for sum; and

WHEREAS, pursuant to Sections 163.3220-163.3243, Florida Statutes, before entering into, amending, a development agreement, a local government shall conduct at least two public hearings.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission following a duly noticed public hearing, hereby approve on First Reading, in accordance with the requirements of Sections 163.3220 - 163.3243, Florida Statutes, also referred to as the "Florida Local Government Development Agreement Act", a First Addendum to the Development Agreement between the City of Miami Beach and the New World Symphony, dated January 5, 2004, for the development of a portion of the surface parking lot, bounded by 17th Street to the North, North Lincoln Lane to the South, Washington Avenue to the east and Pennsylvania Avenue to the west, for construction of an approximately 50,000 square foot educational, performance and internet broadcast facility with an exterior screen ("Soundspace"), and an approximately 320-space (+/-) public parking garage facility; said Addendum specifically amending the Development Agreement, and authorizing the Developer to proceed with the design and development of the Park Project comprising of: Zone 1, comprising the Park, Drexel Avenue between North Lincoln Lane and 17th Street and garage site improvements, at the City's cost and expense, not to exceed \$10,000,000; Zone 2, comprising the Jackie Gleason Theater of the Performing Arts' entry landscaping, at the City's cost and expense, not to exceed \$1,150,000; and Zone 3, comprising North Lincoln Lane improvements, at the City's cost and expense, not to exceed \$500,000; and further set the second public hearing on January 12, 2005.

PASSED and ADOPTED this _____ day of November, 2004.

ATTEST:


CITY CLERK

MAYOR

JMG/CMC/KOB/rar

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**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 12-2-03
City Attorney Date

FIRST ADDENDUM TO DEVELOPMENT AGREEMENT

THIS FIRST ADDENDUM TO DEVELOPMENT AGREEMENT is made as of this _____ day of December, 2004 (this "First Addendum") by and between the CITY OF MIAMI BEACH, FLORIDA ("Owner"), a municipal corporation duly organized and existing under the laws of the State of Florida, and NEW WORLD SYMPHONY, a not-for-profit Florida corporation ("Developer") (the Owner and Developer, collectively, the "Parties").

RECITALS

A. Owner and Developer entered into an Agreement of Lease ("Lease") dated as of January 5, 2004, pursuant to which Owner leased to Developer certain real property described in Exhibit A attached hereto and made a part hereof ("Land").

B. Concurrently therewith, Owner and Developer also entered into a Development Agreement ("Development Agreement") dated as of January 5, 2004, setting forth, among other things, the Owner's and Developer's respective responsibilities and agreement to coordinate and cooperate in the planning, scheduling and approval of the development, design, construction and operation of the performance, educational and internet broadcast facility known as "SoundSpace" (the "Project") to be located on the Land, and of certain amenities, facilities and other infrastructure improvements.

C. Pursuant to Section 23.4 of the Development Agreement, Owner, at its sole cost and expense, may develop a park ("Park") or another similar public amenity for use and enjoyment by all residents of and visitors to the City of Miami Beach and by all visitors to the SoundSpace Project. Owner has now determined to develop such a Park, as well as other related public amenities and Infrastructure Improvements, as contemplated by Article 23 of the Development Agreement.

D. The Parties wish to enter into this First Addendum in order to memorialize certain agreements made in furtherance of their respective responsibilities as described above and in the Development Agreement.

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Addendum is made upon the terms, covenants and conditions hereinafter set forth.

1. Capitalized Terms. All capitalized terms not defined herein shall have the meanings given to them in the Development Agreement.

2. Additional Definitions. Article 1, entitled "Definitions," is amended by adding the following definitions:

(a) "Park" means the public park facility that will be developed pursuant to this Addendum and the Development Agreement.

(b) "Park Property" means the real property owned by Owner upon which the Park will be constructed, legally described on Exhibit "B" attached hereto and made a part hereof.

(c) "Park Project" means the Park and Infrastructure Improvements to be designed and constructed on the Park Project Property (defined herein), in accordance with the provisions of this Addendum and the Development Agreement. Certain preliminary estimates of costs of the Park Project, said costs hereinafter defined as the Preliminary Park Project Budget, are set forth on Exhibit "C" attached hereto and made a part hereof. The Park Project shall be divided into three (3) zones as follows:

- (i) Zone 1 City Center Park – consisting of the Park, the Drexel Avenue improvements, and the Garage;
- (ii) Zone 2 Jackie Gleason Theater of the Performing Arts (TOPA) Entry Landscaping; and
- (iii) Zone 3 Lincoln Lane Improvements.

(d) "Park Project Concept Plan Alternatives" means _____.

(e) "Park Project Costs" means all costs, fees and expenses incurred in connection with the design, development and construction of the Park Project, all of which are and shall be at the sole cost and expense of the Owner. The Parties agree and acknowledge that the Park Project Costs shall not exceed the approved Park Project Budget without the express approval of the City Commission.

(f) "Park Project Design" means the Park Project Concept Plan Alternative that is approved by the City Commission for the final design of the Park Project in accordance with the approval by the City Commission of the final "Basis of Design Report" as set forth in Section 6 below.

(g) "Park Project Property" means the land owned by the Owner upon which the Park Project will be constructed, legally described on Exhibit "D" attached hereto and made a part hereof.

(h) "Preliminary Park Project Budget" means the preliminary estimates of costs, including estimated hard and soft construction costs, to be incurred in connection with the design, development and construction of the Park Project, as set forth in Exhibit "C", attached hereto and made a part hereof. The Parties acknowledge that the Park Project Concept Plan Alternatives shall be prepared in accordance with the not-to-exceed dollar amount(s) as set forth in the Preliminary Park Project Budget.

(i) "Park Project Budget" means the final budget, as mutually agreed to by the parties, and as approved by the City Commission concurrent with the approval of the Park Project Design, and representing all final hard and soft construction costs to be incurred in connection with the design, development and construction of the Park Project. The Parties agree

and acknowledge that the Park Project Budget represents the total maximum amount of funding which the City shall make available for the development, design, and construction of the Park Project and, accordingly, the Park Project Budget, shall not be exceeded without the express approval of the City Commission. The Parties further agree and acknowledge that the Developer is not and shall not be liable for any portion of the Park Project Costs or the Park Project Budget.

3. Replacement of Section 23.4. Section 23.4, entitled "Park," is deleted in its entirety and replaced with the provisions of this Addendum.

4. Park Project Design. Developer has selected as its Architectural Consultant for the SoundSpace Project the firm of Gehry Partners, Ltd. Developer and Owner wish to enhance the benefits to the City, the Owner and the Developer of an integrated vision and design for the development of the Park Project, and therefore Developer, with Owner's consent, has selected Gehry Partners, Ltd. as its architectural consultant for the Park Project. Gehry Partners, Ltd., shall be referred to hereafter as "Architectural Consultant."

5. Park Project Design and Construction. Architectural Consultant shall design the Park Project at Owner's sole cost and expense, in accordance with the Park Project Design and subject to the not-to-exceed dollar amount(s) as set forth in the Park Project Budget. Developer, Owner and Architectural Consultant shall work together to facilitate the Park Project Design and Park Project Budget, which shall be approved by Owner as set forth below. Based on the approved Park Project Design and Park Project Budget, Developer shall construct the Park Project at Owner's sole cost and expense in accordance with the Park Project Design and subject to the not-to-exceed dollar amount(s) as set forth in the Park Project Budget.

6. Procedure for Park Project Design Approval. Architectural Consultant, at Owner's sole cost and expense, shall prepare and provide to Owner and Developer such Park Project Concept Plan Alternatives as Developer and Owner mutually agree to be necessary. The Architectural Consultant shall use the Preliminary Park Project Budget as the basis for preparing all Alternatives. Following Developer's and Owner's preliminary approval of various Park Project Concept Plan Alternatives, Developer and the City Manager, acting in a proprietary and not regulatory capacity, shall meet to commence the preliminary review process. Following this initial meeting, the City and the Developer shall conduct a minimum of two Community Design Workshops to receive public input on the proposed Alternatives. Thereafter, Developer shall submit such Alternatives to the City Manager for review and approval of the Mayor and City Commission at a regularly scheduled meeting. The City Manager shall have thirty (30) Business Days after such regularly scheduled Commission meeting to review the Park Project Concept Plan Alternatives. The City Manager, as part of his review, may request the Architectural Consultant to prepare and Developer to submit additional Park Project Concept Plan Alternatives and/or request modifications to the submitted Alternatives. Developer shall work with the Architectural Consultant to facilitate such additional or modified alternatives. Upon conclusion of the City Manager's review, the Park Project Concept Plan alternatives will be submitted at a regularly scheduled meeting as a "Basis of Design Report" to the Mayor and City Commission for final approval. Following submission of the "Basis of Design Report," the City Commission may have the option of either (i) selecting and approving a Park Project Concept Plan, which, if approved, shall become the Park Project Design; concurrent with the approval of the Park Project Design, the City Commission shall also approve the Park Project Budget; or (ii) at its sole option,

the City Commission may elect to not proceed with the Park Project. In the event the City Commission fails to select and approve a Park Project Concept Plan, or it elects to not proceed with the Park Project, then, the City shall, within a reasonable time frame, notify the Developer in writing in accordance with Article 20 of the Development Agreement, and upon Developer's receipt of such notice, this Addendum to the Development Agreement shall terminate and be of no further force or effect, subject to the occurrence of the following condition. Upon such termination of this Addendum, the City will only be liable for Park Project Costs incurred by Developer in connection with this Addendum and incurred and owing through the termination date. Upon Developer's receipt of payment in full of its Park Project Costs in accordance with the foregoing sentence, thereafter neither Party shall have any further rights or obligations to the other under this Addendum. Termination of this Addendum shall not operate to modify or amend the respective rights and obligations of the Parties under the Development Agreement or the Lease.

7. Funding. Owner's funding the design, development and construction of the Park Project shall be as follows:

(a) Commencing retroactively with costs, fees and expenses incurred by Architectural Consultant in connection with its October 26, 2004, visit to Miami Beach to confer with the Owner as relates to the Park Project, Owner shall fund directly to the Architectural Consultant all of its fees, costs and expenses in connection with the design and review process described in Sections 5 and 6 above on a basis agreed to by the Owner, the Developer, and the Architectural Consultant. In addition, Owner shall fund directly to Developer all of its fees, costs and expenses incurred in connection with the design and review process described in Sections 5 and 6 above, based upon a mutually agreed upon project cash flow schedule to be developed by Owner and Developer. In accordance with the approved payment schedule, Developer shall submit all invoices for approval by the City Manager, substantiated with appropriate backup. The City Manager may request additional reasonable backup material. City Manager shall approve and pay each approved invoice, or disapprove such invoice based upon specific deficiencies given to the Developer in writing, no later than thirty (30) Business days after its submission.

(b) In addition to the fees, costs and expenses funded as set forth in Subsection 7(a) above, Owner shall fund, in the manner set forth below, all other Park Project Costs, which shall include but not be limited to all hard construction costs, all so-called "soft costs," costs of meeting the Concurrency Requirements, the City's Prevailing Wage Ordinance, if applicable, and all costs in connection with all zoning, permitting, and other requirements imposed by all Governmental Authorities, as well as all costs and fees payable in connection with design, architectural, engineering and other professional services.

(c) Owner shall pay to Developer the Park Project Costs described in Subsection 7(b) above, in accordance with the payment schedule to be mutually agreed to by the Parties in accordance with Subsection 7(a) above.

(d) Upon Developer's submission to Owner of the final "as built" Plans and Specifications for the Park Project, any additional Park Project Costs which may be due and

owing shall promptly be paid in full by Owner to Developer. All payments shall be made in cleared U.S. funds.

(e) Notwithstanding anything contained in this Addendum or the Development Agreement, the Parties agree and acknowledge that (i) the Park Project Budget represents the total maximum amount of funding which the City shall make available for the development, design, and construction of the Park Project and, accordingly, the Park Project Budget shall not be exceeded and/or increased without the express authorization of the City Commission; and (ii) the Developer is not and shall not be liable for payment of any portion of the costs, fees or expenses incurred in connection with the Park Project.

8. Completion. The construction of the Park Project shall be deemed to have been completed in substantial accordance with the approved Plans and Specifications for the Park Project, as they may be modified, notwithstanding that minor adjustments may be required by Developer or minor errors or omissions may require correction, provided that such adjustments and corrections are made within a reasonable amount of time after discovery of same.

9. Possession. Entry into possession of the Park Project by Owner, as evidenced by the use thereof by Owner (the date such use first occurs being the "Park Project Possession Date"), will constitute acknowledgment by Owner that the Park Project is in the condition in which Developer was required to deliver the Park Project under the terms of this Agreement and that Developer has performed all of its obligations relating to construction of such Park Project, except for (i) those defects, if any, in construction from the Plans and Specifications, other than latent defects therein, set forth on a written list ("punch list") to be delivered by Owner to Developer within thirty (30) Business days after the date Developer advises Owner that the Park Project is ready for possession, and (ii) those latent defects therein as to which Owner notifies Developer, in writing within twelve (12) months of the Park Project Possession Date. At the expiration of such twelve (12) month period, Developer shall assign to the Owner any warranty rights obtained from contractors, subcontractors and suppliers which remain outstanding at such time. Developer shall, upon receipt of the list referred to in subparagraph (i) hereof, commence to correct all such defects which require correction in order for the construction of the Park Project to comply in substantial accordance with the approved Plans and Specifications, as modified, if applicable, and the applicable provisions of this Agreement.

10. Utilities. All utilities serving the Park Project shall be provided through separately metered systems that are separate from those serving the Project and any structures appurtenant thereto. Owner shall pay the cost of such utilities directly to the authority or utility providing the same. The costs of repair and maintenance of all utility systems serving the Park Project shall be the sole responsibility of Owner.

11. Miscellaneous.

(a) Counterparts. To facilitate execution, the parties hereto agree that this First Addendum may be executed in counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party,

appear on one or more of such counterparts. All counterparts shall collectively constitute a single First Addendum.

(b) Miscellaneous. All references in the Development Agreement to the "Agreement" shall hereafter mean and refer to the Development Agreement as amended by this First Addendum. If there is a contradiction between the terms of the Development Agreement and this First Addendum, then the terms of this Addendum shall control. Facsimile signatures appearing hereon shall be deemed an original.

(c) Effect of First Addendum. Except as modified herein, the Development Agreement remains in full force and effect. In the event of any conflict or ambiguity between the Development Agreement and this Addendum, this Addendum shall control.

EXECUTION BY OWNER

IN WITNESS WHEREOF, Owner and Developer intending to be legally bound, have executed this First Addendum to Development Agreement as of the day and year first above written.

WITNESSES:

CITY OF MIAMI BEACH, FLORIDA, a
municipal corporation of the State of Florida

Print Name: _____

By: _____

Print Name: _____

ATTEST:

By: _____ [SEAL]

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

W. H. White 12-3-04
City Attorney Date

The foregoing instrument was acknowledged before me this. _____ day of _____, by _____, as Mayor, and _____, as City Clerk of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification

My commission expires:

Notary Public, State of Florida
Print Name:

EXECUTION BY DEVELOPER

WITNESSES:

THE NEW WORLD SYMPHONY, a not-for-profit Florida corporation

Print Name: _____

By: _____
Howard Herring, President and CEO

Print Name: _____

ATTEST:

By: _____
_____, Secretary

[CORPORATE SEAL]

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by Howard Herring, as President and CEO, and _____, as Secretary, of THE NEW WORLD SYMPHONY, a not-for-profit Florida corporation, on behalf of such corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

EXHIBIT A
LEGAL DESCRIPTION OF LAND

EXHIBIT B

LEGAL DESCRIPTION OF PARK PROPERTY

EXHIBIT C
PRELIMINARY PARK PROJECT BUDGET

EXHIBIT D
LEGAL DESCRIPTION OF PARK PROJECT PROPERTY

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CONTRACT

Between

CITY OF MIAMI BEACH, FLORIDA

and the

AMERICAN FEDERATION OF STATE, COUNTY AND

MUNICIPAL EMPLOYEES, AFSCME LOCAL NO. 1554

May 1, 2004 – April 30, 2007

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CONTRACT

THIS CONTRACT, made and entered into this _____ day of _____ 2004, by and between the CITY OF MIAMI BEACH, FLORIDA, (herein called the "City"), and the AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES UNION, LOCAL 1554, (herein called the "Union").

WITNESSETH:

WHEREAS, this Contract has as its purpose the promotion of harmonious relations between the City and the Union and the negotiation of wages, hours, and working conditions to be in effect during the term(s) of this Contract; and

WHEREAS, the rights, obligations, and authority of the parties to this Contract are governed by and subject to the laws of the State of Florida;

NOW, THEREFORE, the parties agree with each other as follows:

ARTICLE I
RECOGNITION

Section 1.1. Representation. Pursuant to and in accordance with all applicable provisions of Chapter 447, Part II of the Florida Statutes, the City recognizes the Union as the exclusive bargaining representative for all employees included in the bargaining unit of Local 1554, for the purpose of collective bargaining concerning wages, hours of work and other terms and conditions of employment.

Section 1.2. Bargaining Unit. The bargaining unit of this local union has been determined by the Public Employees Relations Commission to be appropriate for the purposes of collective bargaining. Certificate No. 379 was issued to Local 1554 on January 9, 1978. The bargaining unit of this local union includes all classifications listed below:

Assistant Pumping Mechanic	Recreation Program Supervisor
Building Supervisor	Sewer Pipefitter
Central Services Technician	Sewer Supervisor
Control Room Operator	Storekeeper I and II
Diesel Generator Mechanic	Storekeeper/Mechanic
Fire Equipment Mechanic	Stores Clerk
Fleet Service Writer	Street Lighting Technician I and II
Heavy Equipment Operator I and II	Street Supervisor
Mechanic I, II, and III	Tree Maintenance Supervisor
Municipal Service Worker I, II, and III	Tree Trimmer
Municipal Service Worker Trainee	Waste Collector
Museum Guard	Waste Driver Supervisor
Park Supervisor	Water Meter Technician I and II
Pest Control Supervisor	Water Pipefitter
Pumping Mechanic	Water Supervisor

The parties agree that they will periodically review the job classifications and, if appropriate, file a joint petition to Public Employees Relation Commission (PERC) to determine which positions should be in or out of the bargaining unit. The parties agree that after this Contract for the period of 2004-2007, has been ratified by both parties, they will file a joint petition to the Public Employees Relation Commission (PERC) to determine whether the following positions should be in or out of the bargaining unit: Building Services Technician; Concession Attendant; Recreation Leader I; Recreation Leader II; and Sign Maker.

Section 1.3. Communications

- a) All official union communications from the City shall be sent to the Union's designated address, telephone or email. An official AFSCME letter will be provided by AFSCME to notify the City of these designations.
- b) All official City communications from the Union shall be sent to the City Manager's designee for Labor Relations.

Section 1.4. Rights of Individuals

- a) A union member shall be entitled to Union representation in accordance with the provisions of this Contract at each and every step of the grievance procedure set forth in this Contract.
- b) All references to "employees" in this Contract shall mean both sexes, and where the male gender is used, it shall be construed to include male and female employees. The City agrees not to interfere with the rights of employees to become members of the Union and the Union agrees not to interfere with the rights of employees to refrain from becoming Union members. There shall be no discrimination, interference, restraint, or coercion by the City against any employee because of Union membership or Union activity. There shall be no discrimination, interference, restraint, coercion by the Union against any employee because of non-union membership.
- c) No mechanical recording devices of any kind shall be used in discussions between department heads, division heads, or supervisors and employees unless the parties mutually agree otherwise. It is specifically understood that this subsection shall not in any way apply to any City board.
- d) During an entrance interview, no prospective new employee who would be covered by this Agreement shall be questioned concerning his/her feelings, pro or con, toward the Union.
- e) Upon reasonable request, an employee or his/her Union representative designated in writing shall have the right to review his/her personnel file maintained by the Human Resources Department

(or by the Division) in the presence of an appropriate representative of the Human Resources Department or Division Management. Employees shall be provided with a copy of any documents placed in his/her personnel file which adversely reflect on an employee's work performance. If requested by the employees, his/her supervisor will discuss the documents with him/her. The employee shall be allowed to place in his/her personnel file a response of reasonable length to anything contained therein which the employee deems to be adverse. It is specifically understood, that this provision shall not in any way alter or modify the Personnel Rules concerning tests or examinations and the period of time which an employee has to review tests or examinations which he/she has taken.

- f) Nothing contained in this Contract shall abridge the rights of individual employees or the employer under Florida law.
- g) Upon request, Human Resources will provide to the Union President a monthly list of new hires in bargaining unit positions.

ARTICLE 2
DEDUCTION OF UNION DUES

Section 2.1. Check off. Upon receipt of a lawfully executed written authorization from an employee, which is presented to the City by an official designated by the Union in writing, the City agrees during the term of this Contract to deduct the uniform biweekly Union dues of such employees from their pay and remit such deductions to Council 79 Business Manager (provided address agreed) together with a list of the employees from whom deductions were made; provided, however, that such authorization is revocable at the employee's will upon thirty (30) days written notice to the City and the Union. The Union will notify the City thirty (30) days prior to any change in its dues structure.

The Union shall pay, during the term of this Agreement the amount of one hundred dollars (\$100.00) annually as a service charge for implementing and processing the above stated dues deductions. The Union shall make the payment on or before April 1 of each year of the Agreement.

Section 2.2. Indemnification. The Union agrees to indemnify and hold the City harmless against any and all claims, suits, orders or judgments brought or issued against the City as a result of any action taken or not taken by the City under the provision of this Article.

ARTICLE 3
EQUAL EMPLOYMENT OPPORTUNITY

Section 3.1. No Discrimination. In accordance with applicable Federal and State law, the City and the Union agree not to discriminate against any employee as defined in federal, state, and municipal ordinances.

Nothing contained herein shall serve as a barrier for the implementation by the City of any such personnel actions as deemed necessary to comply with the Americans With Disabilities Act.

The development of job specifications that delineate those duties that are the required, essential tasks of each job for the purpose of the Americans With Disabilities Act (ADA), shall not be considered discriminatory or be grievable under the terms of this Contract.

This section does not preclude any bargaining unit employee from pursuing any appeal he/she may have under the Civil Rights Act.

Section 3.2. Affirmative Action. The parties acknowledge the existence of Federal Guidelines on voluntary affirmative action programs and the City is committed to the development of an Affirmative Action Plan in accordance with those guidelines and law. The Union will be provided with an opportunity to participate in the development of the Plan, and will thereafter assist the City in achieving any lawful goals set forth in the Plan.

Section 3.3. Examinations. The City is committed to the utilization of fair, job-related examinations and fairly administering such examinations, however, the subject matter and/or administration of these examinations shall be subject to the grievance procedure up to Step III of the grievance procedure of this Contract, however, questions or complaints concerning examinations may be brought directly to the Human Resources Director.

ARTICLE 4
GRIEVANCE PROCEDURE

Section 4.1. Definition of Grievance and Time Limit for Filing. A grievance is a dispute involving the interpretation and application of the express terms of this Contract, excluding matters not covered by this Contract. The Union acknowledges that the Personnel Board retains the right to make, enforce, amend, and apply the Personnel Rules and Regulations, and that neither the City, the Union, nor an arbitrator can control the Personnel Board's exercise of this right. No grievance shall be entertained or processed unless it is submitted within ten (10) working days after the occurrence of the event giving rise to the grievance or within ten (10) working days after the employee, through the use of reasonable diligence, should have obtained knowledge of the occurrence of the event giving rise to the grievance.

Section 4.2. Grievance Procedure. Grievances shall be processed, individually, as follows:

STEP 1: Any employee who has a grievance (or a steward on the employee's behalf) shall submit the grievance, on the Grievance Form as provided by the City, to the supervisor designated for this purpose by the City, and if the employee wishes, he/she shall be accompanied by his/her Union Steward.

If no settlement is reached, the supervisor shall give the City's written answer within five (5) working days after such presentation. The Election of Remedy Form as agreed herein shall be completed and submitted with the Step 1 grievance.

STEP 2: If the grievance is not settled in Step 1 and the employee wishes to appeal the grievance to Step 2 of the Grievance Procedure, it shall be referred in writing to the Department Head within three (3) working days after the Supervisor's answer in Step 1 and shall be signed by the employee and/or the Union Steward. The Department Head, or his/her Representative, shall discuss the grievance within three (3) working days with the Union Steward at a time mutually agreeable to the parties.

If no settlement is reached, the Department Head, or his/her Representative, shall give the City's written answer to the Union within three (3) working days following their meeting. Grievances processed without the completed, signed Election of Remedy Form attached will be considered as withdrawn, and will be returned to the Union President or the Grievant(s).

STEP 3: If the grievance is not settled in Step 2 and the Union and/or the employee desires to appeal, the Union President or his/her designated Representative and/or the employee shall appeal in writing to the City Manager or his/her Representative, within three (3) working days after the designated Department Head's answer in Step 2. A meeting between the City Manager or his/her Representative, and the Union Grievance Committee, not to exceed five (5) employees (and/or the employee) shall be held at a time mutually agreeable to the parties.

If no settlement or a settlement is reached, the City Manager or his/her Representative, shall give the City's written answer to the Union and the employee within five (5) working days following the meeting.

The Union President or the Chief Steward and the appropriate Department Head may mutually agree in writing that the first two steps of the grievance procedure set forth above may be bypassed if the circumstances warrant it.

The City and the Union hereby agree that this procedure and the arbitration procedure set forth in Section 4.3 shall be the sole and exclusive method for interpreting and enforcing this Agreement, except in matters over which the City's Personnel Board or Hearing Examiner has jurisdiction (See Sections 4.6). Except as otherwise provided herein, the Union shall have the exclusive right to represent all employees and to control the submission of grievances to arbitration. In accordance with its obligation to fairly represent employees, the Union shall be authorized to withdraw, abandon or settle any grievance at any time.

Section 4.3. Binding Arbitration. If the grievance is not resolved in Step 3 of the grievance procedure, the Union, on behalf of the employee(s) who filed the grievance, may refer the grievance to binding arbitration within five (5) working days after receipt of the City's answer in Step 3. The parties shall attempt to agree upon an arbitrator within ten (10) working days after receipt of notice of referral and in the event the parties are unable to agree upon an arbitrator within said ten (10) workday period, either or both parties may request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbitrators. Both the City and the Union shall have the right to strike two names from the panel. The parties shall alternately strike one name at a time. The remaining person shall be the arbitrator. The arbitrator shall be notified of his/her selection within five (5) working days by a joint letter from the parties requesting that he/she advise the parties of his/her availability for a hearing.

Section 4.4. Authority of Arbitrator. The arbitrator shall have no right to amend, modify, ignore, add to, or subtract from the provisions of this Contract. He/She shall consider and decide only the specific issue submitted to him/her in writing by the parties, and shall have no authority to make a decision on any other issue not so submitted to him/her. The arbitrator shall submit in writing his/her decision within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, provided that the parties may mutually agree in writing to extend said limitation. The decision shall be based solely upon his/her interpretation of the meaning or application of the express terms of this Contract to the facts of the grievance presented. Consistent with this section, the decision of the arbitrator shall be final and binding.

Section 4.5. Expenses of Arbitration. The fee and expenses of the arbitrator shall be paid by the party not prevailing in the decision of the arbitrator. If only one party wishes a written transcript, it shall be the party's sole financial responsibility. If both parties wish the transcript, they shall split the cost. Each party shall be responsible for compensating its own representative and witnesses.

Section 4.6. Election of Remedies. Disciplinary actions may be grieved under the grievance/arbitration provisions contained in this Article or to a Hearing Examiner, who shall be selected by utilizing the procedures outlined in Section 4.3 of this Article. Disciplinary actions that

may be appealed through the Hearing Examiner process include only removals, suspensions or demotions. A grievance involving the interpretation or application of this Agreement may be grieved solely under the grievance/arbitration provisions contained in this Article. Grievances regarding certain non-disciplinary matters, such as disagreements as to the waiving or application of changes to personnel rules or other work rules or policies may be filed via the Personnel Board procedures.

The decision of the hearing officer shall be final and binding. The cost of a Hearing Officer shall be paid by the City. Any proceedings before the Hearing Examiner shall be conducted pursuant to the attached Hearing Examiner Rules.

Section 4.7 Grievances Involving Discipline. Discipline shall only be for cause but shall not include informal counseling or oral reprimands that are not written up and placed in the employee's Personnel file. Written reprimands, suspensions, and dismissals shall be considered discipline. Any employee who has completed the working test period (probationary period) and who is disciplined may file a grievance concerning same. Grievances involving disciplinary actions, may be filed at Step II of the grievance process as set forth in Section 4.2 or, if applicable, through the Hearing Examiner process as stated in Section 4.6. Written reprimands may only be grieved through Step III of this procedure. The City will review and consider the length of time of previous reprimands as part of the progressive discipline process.

Section 4.8. Union Stewards. Union Stewards shall be designated by the Union. The Union shall be entitled to 18 Stewards distributed as follows:

Sanitation	3
Parks Maintenance	2*
Fleet Management	2*
Water/Sewer	2
Streets and Streetlights	1
Property Management	1
Recreation & Parks Department & Bass Museum	4
Parking Department	1
Chief Steward (Police Department)	1
Fire Support	1

* Each at a different location.

The Chief Steward (or President) shall have the right to function in the absence of any designated Steward. The Union shall certify in writing to the City the names of the Stewards in each of the foregoing areas who shall be employed in said area. Stewards shall be permitted during working hours without loss of pay, to investigate, discuss and process grievances in their respective areas; provided the following conditions are met: (1) They first secure the permission of the Supervisor designated by the City for this purpose (such permission shall not be unreasonably denied); (2) The Supervisor shall be notified 24 hours prior to investigating, discussing, and processing grievances on City time (shorter notice may be given to the Supervisor in the case of an urgent matter); and (3) The Union Steward or Representative will report his/her return to work to the immediate Supervisor upon conclusion of the use of time for grievance under this section.

Section 4.9. Grievance Meetings. Grievance meetings shall be held at mutually agreed to times and places. Where practicable, the parties should schedule such meetings during working hours.

Section 4.10. Union Representation. The Union, in accordance with Chapter 447.401, Florida Statutes, shall not be required to process grievances for employees who are not members of the Union. The Union will, however, be notified of the filing of all grievances and shall have a right to be present at any scheduled meetings or hearings held pursuant to Section 4.2 (Grievance Procedure). In addition, the union shall be notified of all proposed grievance settlement with any bargaining unit member in writing prior to the final disposition of a settlement agreement.

The City shall notify the Union of all grievances filed by bargaining unit members, scheduled meetings, and hearings at Step III of the grievance process pursuant to Section 4.2. In addition, the Union shall be notified of all proposed grievance settlements with any bargaining unit member in writing prior to final disposition of a settlement agreement.

ARTICLE 5
NO STRIKE AND NO LOCKOUT

Section 5.1. No Strike. The parties hereby recognize the provisions of Chapter 447, Florida Statutes, which define strikes, prohibit strikes, and establish penalties in the case of a strike and incorporate those statutory provisions herein by reference. The parties further agree that the City shall have the right to discharge or otherwise discipline any employee(s) who engage(s) in any activity defined in Section 447.203(6) of the Florida Statutes.

Section 5.2. No Lockout. The City will not lockout any employees during the term of this Contract as a result of a labor dispute with the Union.

ARTICLE 6
MANAGEMENT RIGHTS

It is recognized that except as stated herein, it is the right of the City to determine unilaterally the purpose of each of its constituent agencies, set standards of service to be offered to the public, and exercise control and discretion over its organization and operations. The Union recognizes the sole and exclusive rights, powers, and authorities of the City further include but are not limited to the following: to direct and manage employees of the City; to hire, promote, transfer, schedule, assign, and retain employees; to suspend, demote, discharge or take other disciplinary action against employees for just cause; to relieve employees from duty because of lack of work, funds or other legitimate reasons; to maintain the efficiency of its operations, including the right to contract and subcontract existing and future work; to determine the duties to be included in job classifications and the numbers, types, and grades of positions or employees assigned to an organizational unit, department or project; to assign overtime and to determine the amount of overtime required; to control and regulate the use of all its equipment and property; to establish and require employees to observe all applicable rules and regulations; to conduct performance evaluations; and, to determine internal security practices; provided however, that the exercise of any of the above rights shall not conflict with any of the express written provisions of this Agreement. The Union, its officers, agents, and members agree that they will not interfere with Management in the performance of its duties. The City agrees that, prior to layoff of bargaining unit members, it will advise the Union.

If, in the sole discretion of the City, it is determined that civil emergency conditions exist, including but not limited to riots, civil disorders, hurricane conditions, or similar catastrophes, the provisions of this Agreement may be suspended by the City Manager or his/her designee during the time of the declared emergency, provided that wage rates and monetary fringe benefits shall not be suspended.

Should an emergency arise, the Union President and Staff Representative shall be advised as soon as possible of the nature of the emergency. Nothing contained in this Agreement shall prohibit the implementation of personnel actions the City deems necessary to comply with the Americans With Disabilities Act (ADA).

ARTICLE 7
HOURS OF WORK AND OVERTIME

Section 7.1. Purpose. This Article is intended to define the normal hours of work and to provide the basis for the calculation and payment of overtime. It shall not be construed as a guarantee of hours of work per day or per week, or of days of work per week.

Section 7.2. Normal Workday. The normal workday shall consist of eight (8) or ten (10) consecutive hours of work, exclusive of the lunch period, in a twenty-four (24) hour period. Prior to any change in the normal workday of a group of employees, the City will discuss the proposed change with the Union.

Section 7.3. Normal Workweek. The normal workweek shall consist of forty (40) hours per week. The workweek shall begin with the employee's first regular shift each week. If the workweek is changed, the employee will normally be notified ten (10) days prior to the effective date of change; provided that shorter notice may be given if circumstances do not permit the giving of ten (10) days notice; provided further that it may be changed upon shorter notice upon agreement by the Union. Agreement shall not be unreasonably denied.

Section 7.4. Weekly Overtime. For all hours worked in excess of forty (40) hours during an employee's workweek, the City will pay the employee at the applicable overtime rate.

Section 7.5. Distribution of Overtime Opportunity. Opportunity to work overtime shall be distributed equally as practicable among employees in the same job classification in the same work section and area starting with the most senior employee, provided the employees are qualified to perform the specific overtime work required. Seniority for the purpose of this subsection only shall mean length of continuous service in the division in question. Overtime opportunities shall be accumulated on adequate records (which shall be available to the Union and employees with overtime rosters posted on divisional board and updated monthly) and offered overtime not worked shall be considered as worked in maintaining these records. If any employee establishes that he/she

has not received his/her fair share of overtime opportunities, such employee shall have first preference to future overtime work until reasonable balance is recreated. Employees who have been recorded for overtime hours not worked shall not be discriminated against with respect to future overtime opportunities or job assignments. Overtime worked shall be voluntary, whenever possible. On a particular job, an employee may be asked to complete work in progress during overtime when hazardous conditions are present.

Section 7.6. No Pyramiding. Compensation shall not be more than once for the same hours.

Section 7.7. Paid Leave as Time Worked for Purpose of Computing Overtime. A holiday or other paid leave (excluding workers compensation leave and sick leave) which is observed during an employee's regularly scheduled workweek shall be considered as time worked for the purpose of computing overtime.

Section 7.8. Rest Periods. Each employee shall be granted a fifteen (15) minute rest period with pay which will be scheduled whenever practicable approximately midpoint in the first one-half of the employee's regular work shift and in the second one-half of the shift.

Section 7.9. Seventh Consecutive Day of Work. For all hours worked on an employee's seventh consecutive workday within his/her workweek, the City shall pay two (2) times the employee's straight time hourly rate of pay, provided the employee has worked his/her full shift on each of the six (6) preceding workdays; provided that paid leave will not be considered as time worked for the purpose of this Section. This provision shall not be applicable if a substantial number of employees are scheduled to work seven (7) consecutive workdays because of an emergency such as a hurricane.

Section 7.10. Shift Starting Time. If the scheduled shift starting time of an employee is changed, the employee will normally be notified ten (10) days prior to the effective date of change; provided that shorter notice may be given if circumstances do not permit the giving of ten (10) days notice.

Section 7.11. Reporting Pay. An employee who reports to work as scheduled will be guaranteed

eight (8) hours of work or eight (8) hours of pay at the applicable rate; provided, however, if the employee does not perform the work assigned to him/her (within or below his/her classification) he/she shall not receive any pay for time not worked.

Section 7.12. Call-In and Call-Back Pay. An employee who is called to work outside of his/her normal hours of work will be guaranteed four (4) hours of work or four (4) hours of pay at the applicable rate; provided, however, if the employee does not perform the work assigned in his/her job classification he/she shall not receive any pay for the time not worked.

This provision shall not apply to an early call-in or early report which overlaps into the employee's regular shift. In such case, the early call-in or early report time will be compensated at the employee's regular rate of pay or at the rate of time and one-half the regular rate of pay if the total hours worked in the workweek exceed forty.

Section 7.13. Work Schedule. Work schedule shall normally show the employees' shifts, work days, and hours, and shall be posted when necessary on an appropriate bulletin board.

Section 7.14. Standby. Employees expressly assigned to standby status shall receive two (2) hours of straight time as a Standby bonus for each day of that assignment. Employees will not be paid both the Standby bonus and Call Back pay for the same day (i.e., if called in while on Standby status the employee will be paid only the Call Back pay). The Standby bonus is not considered hours worked for determining overtime. Standby shall be assigned in the City's sole discretion. Employees assigned to standby must respond to any call within ten (10) minutes and must be available to report to the work-site within thirty (30) minutes (or some other reasonable period of time as determined based upon the circumstances). Failure to meet these requirements (as may be modified in the City's sole discretion), or other requirements related to standby assignments that may be determined necessary by the City, shall result in forfeiture of the Standby bonus, and possible disciplinary action, based on the circumstances of each case.

ARTICLE 8
WAGES AND FRINGE BENEFITS

Section 8.1. Wages.

The City of Miami Beach classification and pay system will be utilized under this contract. This includes salary range changes, job audits, and market classification studies. This does not include cost-of-living increases. No change shall take place until the Union President or his/her designee concurs. No decision made within the context of this provision shall result in a lower grade, the removal of a job classification from the bargaining unit, nor shall said decision result in an exemption from FLSA overtime requirements.

- a) Effective with the first (1st) pay period beginning April 19, 2004, there shall be an across-the-board increase of three percent (3%) for all bargaining unit positions. Also effective on April 19, 2004 the minimums and maximums of each range will increase by three percent (3%).
- b) Effective with the first (1st) pay period beginning April 18, 2005, there shall be an across-the-board wage increase of a minimum of three percent (3%). The minimums and the maximums will be increased three percent (3%).
- c) Effective with the first (1st) pay period beginning May 1, 2006, there shall be an across-the-board wage increase of three and one half percent (3.5%). The minimums and the maximums will be increased three and one half percent (3.5%).

Within sixty (60) days of an employee's merit review date, the employee's Department shall complete a Performance Evaluation and forward it to Human Resources. The Evaluation shall be completed in accordance with the policy established by Human Resources. Failure to complete a Performance Evaluation within sixty (60) days will result in an automatic two percent (2%) salary increase. Any other increase will take effect retroactively when the evaluation is completed. Performance Evaluation increases may total no more than four percent (4%).

Employees who receive a score of ninety (90) or above shall receive a four percent (4%) increase on their merit review date.

Employees who receive a score of less than ninety (90), but-eighty (80) or above, shall receive a three percent (3%) increase on their merit date.

Employees who receive a score of less than eighty (80), but-sixty (60) or above, shall receive a two percent (2%) increase on their merit date.

If an employee's merit rating score does not qualify him/her for a merit increase, the employee may grieve the evaluation up to Step 3 under the provisions of this Agreement.

Section 8.2. Shift Differential. Effective November 1, 2001 there shall be a shift differential of forty five cents (\$.45) per hour for work performed at the City's request on shifts beginning after 3:00 P.M. and at or before 11:00 P.M. Effective November 1, 2001 there shall be a shift differential of fifty five cents (\$.55) per hour for work performed at the City's request on shifts beginning after 11:00 P.M. and before 6:30 A.M.

Section 8.3. Holidays. The following fourteen (14) days shall be considered holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the day following Thanksgiving, Christmas Day, Dr. Martin Luther King's Birthday, three (3) floating holidays, and the Employee's Birthday. Employees shall become eligible for floating holidays and the Birthday Holiday upon completing six (6) months continuous service with the City.

Section 8.4. Holiday Pay. Employees shall receive eight (8) hours pay at the employee's regular rate of pay for holidays not worked. Effective November 1, 2001, an employee who is scheduled to work on a holiday shall receive time and one half (1½) his/her regular rate of pay for all hours worked in addition to his/her holiday pay. An employee who works over eight (8) hours on a day

that is observed as a holiday shall receive two (2) times his/her straight time hourly rate of pay for any such hours worked over eight (8).

To be eligible for holiday pay, an employee must report for scheduled work on the holiday, on the last scheduled day preceding the holiday, and the first scheduled day following the holiday unless such absences are excused. Excused absences are defined as:

- 1) an absence due to serious illness or injury;
- 2) approved annual leave;
- 3) floating holiday;
- 4) birthday.

If an employee, scheduled to work, works more than his/her normal hours on a holiday, the excess hours shall be paid at the holiday rate.

Section 8.5. Rate of Pay When Working Out of Classification. An employee may be required to temporarily work out of his/her classification when directed by management. Temporarily is defined as an employee who is clearly and definitely performing the principal duties in a higher pay classification for more than one hour per day, and they shall not exceed 580 hours in a 12-month period, and shall be paid as follows, except at the sole discretion of the Human Resources Director, he/she may waive the 580 hour cap if in his/her judgment, it will best serve the needs of the City service:

- a) Out of class pay shall be distributed as equally as practicable among employees in the same job classification in the same work section.
- b) If he/she is temporarily working in a lower classification, he/she shall receive his/her hourly rate in his/her regular classification. Employees will not be assigned to lower classification work as punishment or to demean the employee.
- c) If he/she is temporarily working for one or more consecutive hours in a higher paying classification, he/she shall be paid an hourly rate of one dollar (\$1.00) per hour to be added to the employee's straight-time rate of pay.

Employees being trained with on-site supervisory assistance in a bona-fide training program for a higher paying classification will be paid their current rate in their regular classification during such training time.

Section 8.6. Uniforms. The City will provide uniforms to bargaining unit employees who are required to wear them. The composition of the uniform shall be determined after consultation with the Union. The Uniforms issued shall be chosen based on considerations of employee safety and comfort, as well as cost. Issued uniforms will be replaced by the Department upon presentation of worn or damaged uniform items by the employee no less than once per year. Each Department Director shall provide necessary safety/foul weather gear, as appropriate.

The vendors will deliver the uniforms in the month of January of each year for the term of this Contract.

All employees shall receive six uniforms.

Six pants or shorts (if appropriate)

Six shirts

Six T-Shirts

One Uniform Jacket (one jacket during the term of the contract)

The parties reserve the right, on January 1, 2006 or thereafter, to reopen this Article to discuss the implementation of a uniform cleaning service program that may be applicable to certain employees, as determined appropriate by the City.

Sponsorship: In the event that the City enters into an agreement with any outside sponsor concerning uniforms that may be issued to any employee(s) (but not necessarily all employees) who are in the AFSCME bargaining unit, the Union agrees that these sponsored uniforms may be issued to satisfy the contractual uniform obligations. The Union agrees that no additional contract obligations concerning uniforms are hereby created, and that such sponsored uniforms may be discontinued at any time by the City. The issuance and/or discontinuance of any such uniforms pursuant to such a sponsorship arrangement shall not be subject to any grievance or appeal process.

Section 8.7. Safety Shoes. Employees in the following job classifications will be required to wear safety shoes during all working hours. Effective October of each year a safety shoe certificate will be provided to those employees in the following job classifications for the purchase of safety shoes meeting ANSIZ41 Federal Safety Standards.

Those employees in the following classifications will make his/her safety shoe selection from a predetermined list of safety shoes, which will be developed by the Shoe Safety Committee comprised of two (2) Union representatives and two (2) Management representatives.

Assistant Pumping Mechanic	Storekeeper I and II
Diesel Generator Mechanic	Storekeeper/Mechanic
Fire Equipment Mechanic	Tree Trimmer
Heavy Equipment Operator I and II	Water Meter Technician I and II
Mechanic I, II and III	Waste Collector
Municipal Service Worker I, II and III	Waste Driver Supervisor
Municipal Service Worker Trainee	Water Pipe Fitter
Park Supervisor	Water Supervisor
Pumping Mechanic	Building Services Technician
Sewer Supervisor	Control Room Operator
Sewer Pipe Fitter	Central Services Technician
Street Supervisor	Pest Control Supervisor
Street Lighting Technician I and II	Tree Trimmer
Stores Clerk	Irrigation Systems Supervisor
	Fleet Service Representative

Employees receiving the safety shoe certificate will be required to purchase and wear the safety shoes during all working hours unless medically prohibited by workers compensation or primary physician, and will be subject to up to the loss of a day's pay for each day that the employee reports to work and fails to wear the required safety shoes. Action taken against the employee under this Section shall not be appealable to the Hearing Examiner or grievable under this Agreement. The City Manager or his/her designee shall review any questions on the interpretation of this paragraph.

When, due to extreme wear and tear or accidental destruction, a replacement pair of safety shoes is required, the City will grant an additional shoe certificate.

Section 8.8. Vacation Benefits. Consistent with applicable ordinances, the vacation benefits presently enjoyed by the employees covered by this Contract shall continue for the term of this Contract.

Section 8.9. Meal Allowance. An employee who works three (3) consecutive hours or more of pre-shift or post-shift overtime shall be paid \$7.00 unless meals are provided by the City. Employees shall receive compensation within three (3) months.

In the event employees are supplied with a meal while working the overtime hours, the meal allowance, as provided under this Section, shall cease.

Section 8.10. Jury and Witness Duty. The City shall permit employees to keep either payments received from courts of competent jurisdiction for being on jury duty or in the alternative his/her standard rate of pay, plus reimbursement of court parking expenses, upon presentation of a receipt for such expenditure.

For each day an employee is called to jury duty, he/she shall be excused from work for such time as is necessary to complete jury duty service. If three (3) or more hours are left in the employee's work shift upon release from jury duty, the employee shall immediately contract his/her immediate supervisor for instruction regarding his/her return to work.

An employee subpoenaed as a witness (not a defendant) for a matter which has arisen in the employee's performance of duties, shall be granted temporary leave of duty with pay equal to the difference between the employee's regular rate of pay and any witness fees received.

An employee who is a defendant in a matter which has arisen in the employee's performance of duties and who is adjudged not guilty or not liable will be reimbursed for work time lost by reason of time spent in court.

Section 8.11. Tool Allowance. Effective January 1, 2002, employees in the Mechanic II, Mechanic

III, and Fire Equipment Mechanic job classifications shall receive a tool allowance of Fifteen Dollars (\$15.00) per pay period; employees in the Mechanic I and Storekeeper/Mechanic job classifications who regularly are required to use their own personal tools as part of their job duties, shall receive a tool allowance of Ten Dollars (\$10.00) per pay period. As a condition precedent to being eligible to receive the tool allowance outlined herein, the following will apply:

Management will produce a detailed list of tools that the tool allowance recipient must have in his/her on site tool box inventory. Further, such tool inventory shall not include tools manufactured by companies that do not offer a 100% tool replacement warranty policy, except for those drill motors or electronic tools that may have less than a 100% warranty. In the limited exception for electric drill motors or electronic tools, all such electric drill motors or electronic tools shall be of professional, industrial grade, manufactured by known quality vendors.

Those employees who do not have all the required tools on the tool inventory shall not receive the tool allowance. Should the individual wish to be re-considered for the tool allowance, he/she may purchase the missing inventory tools and then re-apply for the tool allowance the following month.

Failure to complete the tool purchase within two (2) weeks will be cause for the employee to be eliminated from consideration for receipt of the appropriate tool allowance. Future compliance with the tool inventory will allow the employees in those classifications as outlined above to be eligible to receive the appropriate tool allowance.

Each employee will submit to Management a complete inventory of the tools which they maintain at their job site for working on City vehicles, annually. One (1) hour of time to prepare the annual inventory of tools shall be done on City time once a year.

Each employee shall make his tools available to Management staff for an inventory and/or safety check upon reasonable notice.

Section 8.12. Bereavement. In case of death in the immediate family of an employee, time off with straight-time pay will be allowed of two (2) scheduled work days off per death and four (4) scheduled work days off per death if the funeral is held outside the State of Florida. The immediate family shall be defined as father, mother, husband, wife, sister, brother, son, daughter, grandchild, grandfather, grandmother, mother-in-law, father-in-law, stepfather, stepmother, stepson, stepdaughter, or domestic partner as defined in the Domestic Partner Ordinance. Additional time off may be granted by the Department Head, in writing, chargeable to the employee's accrued sick or vacation leave. In such circumstances such additional sick leave shall not count against an employee for purposes of performance evaluations.

Section 8.13. Pay Periods. Pay day shall normally be every other Friday. In the event such a Friday is a holiday or scheduled day off, the City shall attempt to pay on the preceding day.

Section 8.14. Injury Service Connected. An employee who is absent from duty because of injury which the City Manager or his/her designee determines is the direct result of the employee's performance of duties on behalf of the City, shall continue to receive pay during such absence in accordance with applicable City ordinances. Such pay may continue for a period of time not to exceed sixteen (16) weeks unless extended by the City Manager or his/her designee with the approval of the City Commission. Pay during the period of such absence will be computed as follows:

Employees who are entitled to pay because of injury service-connected, will be paid an amount which is equal to the difference between their normal City pay and the amount of compensation payable under the provisions of the Worker's Compensation Law of the State of Florida. A normal day's pay shall be 1/10 of the biweekly rate of pay.

Section 8.15. Certificates. If an employee is required by law for the performance of his/her work, to obtain a certificate for the spraying of insecticides, or a pumping station operator certificate, or a certificate to handle chlorine, the City shall pay the fee for such certificate. The Labor-Management Committee shall discuss whether higher pay ranges may be appropriate where certificates are required.

Section 8.16. Pay for Hazard Duty.

Effective November 1, 2001, employees working hazard duty will be paid \$1.00 an hour for time actually spent in these activities. Hazard duty applies to the following activities:

- A. Spraying hazardous chemicals (The definition of "hazardous" shall be consistent with the current definition as of ratification).
- B. Diving with scuba gear
- C. Working in trenches five (5) feet or greater
- D. Working in raw sewage
- E. Working forty (40) feet or higher on aerial lift operations
- F. Boat Operator
- G. Hazardous chemical application as defined by MSDS

Section 8.17. Changes in Benefits. The City acknowledges its obligation under state law to notify the Union of any change in a benefit contemplated by the City and permit the Union to bargain over such a change, to the extent that state law requires such bargaining.

Section 8.18. Pension.

Pensionable Compensation: Includes all compensation which is presently included for employees who became members before November 1, 1976.

Under the previous Agreement dated May 1, 1992 through April 30, 1995, for all new hires, new hires being those employees hired on or after April 30, 1993, the compensation benefits should be based on salary and longevity only.

Eligibility for Service Retirement: Age 50 with 5 years of service.

Definition of Dependent: Child who has not attained the age of 18, or 25 if a full-time student, a dependent child regardless of age who is mentally or physically handicapped, and a dependent parent. Dependents share equally the spouse's share.

Amount of Monthly Service Retirement Benefit: Three percent (3%) of the final average monthly earnings (F.A.M.E.) for each of the first 15 years of creditable service and four percent (4%) of F.A.M.E. for each year in excess of 15 years, provided the benefit is not in excess of ninety percent (90%) of F.A.M.E.

Employee Contributions: Increased from eight percent (8%) to ten percent (10%) of salary on a pre-tax basis, effective as of April 30, 1993 under the previous Agreement.

Under the previous Agreement, and effective as of April 30, 1993, the General Employees' Pension System Ordinance was amended to provide a bifurcated pension plan with all new hires being covered by either the City's new pension plan as outlined in the "Green Report" and discussed in the bargaining process, or by an optional 401-A Plan to be adopted with the "Green Report" pension plan.

Said newly-hired employees shall make a one-time, mandatory election upon being hired as to which pension option he/she is eligible to select. All administrative costs of the Pension Plan currently funded from the City's General Fund shall be borne by the Pension Plan.

Reopener: On or after the latter of January 1, 2006, or the final resolution (including any appeals) of the pension related lawsuit known as McKinnon, et al vs. City of Miami Beach, the Union may request, with thirty (30) days written notice, a re-opener to discuss pension benefits for a period not to exceed ninety (90) days.

The parties also agree that AFSCME reserves the right to a "me too" agreement should the City and the CWA agree to an "early retirement" benefit.

The City agrees to change the pension plan, after this agreement is ratified, to provide that in a case where an employee who is thereafter promoted to a position that is in the unclassified pension plan, the promoted employee may elect to stay in the classified pension plan.

Section 8.19. Training and Training Programs. The City and the Union agree that the training and development of employees within the bargaining unit is mutually beneficial. The Union will be kept informed of all training programs. The Union may make recommendations to the City relative to the training of employees within the bargaining unit. The City will consider recommendations and improvements submitted by the Union. The parties agree to meet at the request of either party for the purpose of exchanging information concerning the overall training of employees within the bargaining unit.

Section 8.20. Skill Pay Supplement.

Effective January 1, 2002, the Skill Pay Supplement will be as follows:

Automobile Technicians/Medium/Heavy Truck Technicians	
3 to 5 Certifications	\$40.00/month
6 to 7 Certifications	\$80.00/month
“Master” Auto Technician	\$120.00/month
Fire Mechanics	
Level 1 Fire/Ambulance	\$50.00/month
Level 2 Fire/Ambulance	\$90.00/month
EVT Master Fire/Ambulance	\$130.00/month
Natural Gas ASE Certification	
	\$20.00/month
Parts Specialist	
3 of 3 Certifications	\$40.00/month

Note: The maximum Skill Pay Supplement Benefit would be \$140.00/month

Section 8.21. Health Insurance

- a) The City shall offer medical, dental, and life insurance benefit plans to full-time bargaining unit employees and their legal dependents during the term of this Agreement. The City will continue to pay at least fifty percent (50%) of the premium cost for eligible employees. The City will continue to offer alternative plans as options for employees. The City may change insurance carriers and/or the scope and level of benefits in any plan. The City also may change the percentage of premium cost paid by the City (i.e., provided that it remains at least 50%) from year to year for any one or more of the optional plans available, depending upon the scope and level of benefits available in each of the optional plans.

- b) The City agrees that it will not change the level of benefits during the term of this Agreement without first consulting with the Group Insurance Board, or a labor-management advisory committee created as a substitute for such Board. A bargaining unit employee may serve on this Board/committee for as long as bargaining unit employees participate, exclusively, in the City's group health insurance plan. In the event that the City materially reduces the scope and level of benefits in the current base (PPO or HMO) plan then the Union may request post-implementation impact bargaining. The Union waives impact bargaining over any changes to any optional plan.
- c) Employees in the bargaining unit shall be eligible to participate in the City's flexible and voluntary benefits plans, which may be modified by the City from time to time. The flexible and voluntary benefits plans shall be administered by the City.

8.22. Retiree Health Insurance

- a) The parties agree that any bargaining unit member who elected/s to participate in the 401-A retirement program (in lieu of participating in the City's pension plan) shall be required to work at least ten (10) years before becoming eligible for any retiree health benefits from the City.
- b) The parties agree that any bargaining unit member who is eligible for retiree health benefits from the City must make a one time irrevocable election to continue receipt of health benefits via the City's plan at the time that the employee terminates City employment. The parties also agree that if a member initially elects to continue under City health insurance, but thereafter discontinues or is discontinued from such coverage, then the retiree may resume coverage only at their own expense, without any employer contribution whatsoever.

Section 8.23 Essential Personnel (Hurricane Pay). When the City declares an emergency due to a named hurricane and other events and non-essential personnel employees are advised to stay home with pay and essential personnel employees are ordered to work, essential personnel employees shall be paid at the rate of one and one-half of their straight hourly wages for all hours worked for up to three (3) days.

ARTICLE 9

SENIORITY

Section 9.1. Definition. Seniority for purposes of application of this Agreement except as otherwise stated, is an employee's length of regular, full time continuous service with the City.

Section 9.2. Layoffs. When there is a reduction in force in any job classification (including those resulting from a consolidation or elimination), employees will be laid off in the following order, and such layoffs shall not have the effect of reducing the City's efforts to diversify the workforce:

- a) Employees in the affected classification who have not completed their working test period (probationary period) will be the first reduced.
- b) In the event of further reductions in force, employees will be reduced from the classification in accordance with their seniority and their ability to perform the work available. When two or more employees have equal skill, ability and qualifications, the employee(s) with the least seniority will be the first laid off.

A non-probationary employee reduced from a job-classification under (b) above may be transferred by the City to another position of equal rate, or failing such transfer, he/she may exercise seniority to replace the least senior employee in a lower rated job classification covered by this Contract where the employee has equal skill, ability, and qualifications to perform the work; provided that the replacing employee will be given an opportunity to become familiar with the work, receive basic instruction concerning the work, and orientation on the operation of equipment, if any.

Section 9.3. Recalls. When there is a recall, employees on layoff with seniority will be recalled in inverse order to their layoff, provided they are presently qualified to perform the work in the classification to which they are recalled. No new employees shall be hired into a classification from which employees have been laid off and remain on layoff status until such laid off employees are offered recall in accordance with Civil Service Rules, which shall govern for recall purposes. Employees shall not be transferred into or assigned to work out of class in a classification from which any employees have been laid off and remain on layoff status, except on a temporary basis not

to exceed a total of ninety (90) calendar days in a six-month period.

Section 9.4. Break in Seniority. Seniority and the employment relationship shall be terminated when a non-probationary employee:

- a) quits voluntarily.
- b) is laid off for more than one (1) year, or the employee's length of service, whichever is greater, up to a maximum of two (2) years.
- c) is terminated for cause.
- d) retires or is retired.
- e) fails to return to work at the expiration of any approved leave of absence.
- f) fails to report to work within five (5) workdays after date of written notice of recall to work after a layoff given by the City by certified or registered mail and addressed to the employee at his/her last address appearing on the records of the City. It shall be the employee's responsibility to provide the City with his/her current address.
- g) an employee absent for a period of three (3) work days without notification of a valid reason to the management of his/her department, and who has no legitimate reason for not notifying the management of his/her department shall be considered as having resigned.

Section 9.5. Seniority Lists. Every six (6) months, the City shall post and/or provide for posting on the Bulletin Boards described in Article X, a seniority list showing the continuous service of each employee covered by this Contract and will also provide the Union with a list of new hires and terminations within the bargaining unit during the prior six (6) months. A copy of the seniority list shall be furnished to the Union. The seniority dates and rankings shall be deemed correct unless errors are brought to the attention of the City within thirty (30) days following any posting.

Section 9.6. Union Officer Continuation of Duties. Except as otherwise provided by law, the following Union officers, for the purpose of determining the order of layoff or transfer in lieu of layoff, shall have top seniority within the bargaining unit: President, Vice-President, Secretary-Treasurer, Recording Secretary and Chief Steward.

Section 9.7. Promotions. The term promotion as used in this Contract, means the advancement of an employee to a higher paying classification. Whenever a bargaining unit job opening occurs, other than a temporary opening, in any existing job classification or as the result of the development or establishment of a new job classification, a notice of such opening shall be posted on all bulletin boards for two (2) weeks.

During this period, eligible and qualified employees who wish to apply for the open bargaining unit position or job after it has been announced, may do so. The application shall be in writing, and it shall be submitted to the Human Resources Department.

If there is more than one (1) employee who is qualified for promotion to a job classification in a work section for which no Civil Service examination is required by the Personnel Board, seniority shall be the determining factor where two (2) or more employees within the same work section have equal skill, ability, and qualifications.

Section 9.8. Demotions. The term demotion, as used in this Contract, means reassignment from a position in a higher classification to a position in a lower classification. Demotions may be made to avoid laying off employees, to provide employees with the opportunity to request changes to lower grades for personal convenience, disciplinary reasons, or when an employee is unable to perform satisfactorily the duties of his/her position.

Section 9.9. Preference for Out-of-Class Assignments. Employees who have been previously permanently classified with regular status in a higher rated classification and who have been displaced due to a layoff from that classification but remain in the same division, shall have a preference for any out-of-class assignments to that classification for as long as he/she has recall rights to that classification.

Section 9.10. Shift Preference. Whenever a vacancy occurs in a job classification which operates on more than one shift in a work area within a division, employees in that classification who have previously filed shift preference forms indicating a desire to work on the shift which has the vacancy,

will be considered for reassignment to that shift. If the City grants the shift preference reassignment, it will do so on the basis of seniority, skill, ability and past performance.

If skill, ability and past performance among the persons seeking the reassignment is equal, seniority shall govern. In the event that management determines that granting the reassignment would provide unbalanced shifts or result in inexperienced persons or shifts without proper or sufficient supervision, then the shift preference shall not be granted. Shift preference forms will be valid for twelve (12) months from the filing date.

Section 9.11. Temporary Employees. The City shall have the right to hire up to fifteen (15) temporary employees in any bargaining unit position. Such temporary employees shall be paid at the entry level step for the classification they fill.

Such temporary employees so hired may not exceed one (1) year of continuous employment at any one time. Further, temporary employees may not work in a classification wherein a permanent Civil Service employee is laid off.

The City recognizes the integrity of the certified bargaining unit and will not use the temporary appointment for the purpose of eroding the bargaining unit. Temporary employees will not be covered by Civil Service or this Agreement except as specified herein.

Temporary employees will not receive any pension or fringe benefits, and they shall serve at the will of the employer. Temporary employees may make application for bargaining unit jobs as permanent vacancies are filled.

Any appeals by the Union under this Section shall first be heard by the City Manager or his/her designee for Labor Relations. If no resolution is reached at that level, then the Union may submit the issue to the Public Employees Relations Commission.

9.12 Vacations and Emergencies

- a) When vacations are scheduled, permanent vacancies or shifts are filled, promotions are made to a position within the bargaining unit, seniority shall apply when all other factors are equal.
- b) Seniority will not apply in an emergency situation.

ARTICLE 10
GENERAL PROVISIONS

Section 10.1. Work Rules. The City will provide the Union with a copy of any written work rules affecting employees covered by this Contract that are instituted or modified during the term of this Contract. The Union will be provided with an opportunity to discuss any change in a work rule, and its impact prior to implementation of the change. The current work rules will continue to be enforced, however, the Union will be provided with the opportunity to suggest changes or alternatives to the existing rules.

Section 10.2. Clean-up Time. When necessary at the end of the shift, employees shall be allowed up to fifteen (15) minutes clean-up time to include personal and work area cleanup time. Where facilities are provided, they shall be properly supplied.

Section 10.3. Safety.

- a) The City agrees to comply with all laws applicable to its operations concerning the health and safety of the employees covered by this Contract. Each employee covered by this Contract will be required to comply with all safety and health rules and regulations established by the City. Each employee shall be given a copy of any written safety rules. In case a claim of an imminent unsafe condition which poses an immediate threat of loss of life or bodily harm, a Union Safety Representative shall be entitled to present such complaints and/or claims to the supervisor of the area in question or to the City Manager's designee. The City shall hold two (2) safety meetings per year in the departments for all employees to further safety on the job.
- b) When weather and operational conditions permit, employees may be permitted to ride on the rear of work vehicles provided such transportation is safe and the employees are seated securely. Management has the right to eliminate such transportation if, in the discretion of Management, such seating and/or transportation is unsafe. When weather conditions are such that continual, heavy rain, severe lightning or heavy wind storms are occurring in the immediate work area, the employees will not ride in the back of an open vehicle.

- c) During continual, heavy rain (downpour) or severe lightning storms, employees will take shelter or they will be directed to other work or training, so as to not be exposed to the severe lightning or heavy rain storms.

Section 10.4. Safety Glasses. If an employee requires prescription glasses to perform work and the hazards of his/her job are such that special safety glasses are necessary to ensure safe working conditions, the City will provide them. Such requests shall be subject to the approval of Risk Management.

Section 10.5. Emergency Medical Attention. The City agrees to place first aid kits at various work locations throughout the City. Furthermore, when emergency medical attention is necessary on the job, the City will arrange for expeditious transportation of the employee to a medical treatment facility.

Section 10.6. Transportation of Employees. The City agrees that whenever employees must be transported from an assembly point to a work site or from one work site to another, during inclement weather, such as rain or cold, the means of transportation will be by an enclosed vehicle, wherever possible, except in extenuating circumstances.

Section 10.7. Transfer. Transfer requested by employees to positions in the same classification or pay range within the City's employ may be affected in accordance with the Personnel Rules. The City shall make reasonable efforts to find suitable work for employees who suffer a physical ailment, injury or disability.

Section 10.8. Civic Duty. Employees required to appear before a court of law or other public body on matters not related to their work, in which they are not personally involved (as plaintiff or defendant) and employees elected or appointed to any political or legislative position who request a leave of absence to perform their civic duty, shall be granted a leave of absence in accordance with the Personnel Rules.

Section 10.9. Unpaid Leaves. Leaves of absence for a limited period, not to exceed six (6) months, may be granted for any reasonable purpose in accordance with the Personnel Rules and such leaves may be extended or renewed at the employee's request and upon agreement by the City.

Leaves of absence for up to six (6) months shall be granted to accept appointment to office within the Union or employment within the Union.

Section 10.10. Negotiation Pay. Up to four (4) members of the Union's Negotiating Committee, during negotiations for a successor collective bargaining agreement, shall be paid for all time spent in negotiations which would otherwise have been time worked by the member of the Negotiating Committee. Negotiating time beyond the normal work hours or beyond an employee's scheduled workday or workweek shall not be considered as time worked for the City.

Section 10.11. Contracting and Subcontracting of Public Works. If the City believes that it is necessary to contract out or subcontract work where the direct effect would result in the layoff of employees, the City will meet with the Union prior to making the decision. If a decision is made to contract out or subcontract work, after the Union has had a reasonable opportunity to present alternatives to the contracting or subcontracting proposal and to have those alternatives considered, any reduction in force will be handled insofar as practicable through attrition and/or transfer to other positions.

Section 10.12. Sick and Vacation Leave Accrual and Maximum Payment on Termination. The present policy concerning sick leave, including the policy for payment of accrued sick and vacation time combined, up to a maximum of one year's salary, upon termination, retirement, or death, shall continue for all employees hired before October 1, 1978.

All new employees covered by the agreement shall, under applicable ordinances, rules and regulations: shall be allowed to accumulate no more than 360 hours of vacation leave except in accordance with provision for postponement of vacation leave; be permitted to transfer sick leave in excess of 360 hours to vacation leave at the rate of two (2) days of sick leave to one (1) day vacation

leave to be used in the pay period year when transferred, be permitted a maximum payment time at termination, death, or retirement of 480 hours vacation leave and one-half of sick leave to a maximum of 600 hours. See schedule of implementation below:

1. A post October 1, 1978 employee who retires between the ratification date and on or before April 30, 2002, shall be entitled to termination payout of one-half ($\frac{1}{2}$) of his/her accrued sick leave up to a maximum payout of 480 hours.
2. A post 1978 employee who retires on or after April 30, 2003, shall be entitled to a termination payout of one-half ($\frac{1}{2}$) of his/her accrued sick leave up to a maximum payout of 600 hours.
3. Effective January 1, 2002, the "Must Use" cap on vacation will be raised to 360 hours.

Section 10.13. Perfect Attendance Bonus. Employees who perform the full scope of their regularly assigned classification for each calendar year shall receive a lump sum bonus of \$300.00 (non-pensionable earnings) provided that they have not used sick leave or been absent for any reason that was not authorized at least 48 hours in advance. An employee will also be allowed two (2) incidents of tardiness and one (1) emergency vacation. Employees out on ISC will not be eligible for the perfect attendance bonus.

Section 10.14. Changes in Job Specifications and New Classifications. Changes in existing specifications, or the creation of new classifications shall be submitted for review and comment by the Union prior to implementation or submission to the Personnel Board.

Section 10.15. Opportunity for Advancement. To the extent that funds and personnel are available, the City is committed to facilitating the efforts of employees, through training, to increase their efficiency, broaden their knowledge, and become more effective in performing their duties in order to enhance their opportunity for promotion.

Section 10.16. Union Conventions. Up to a maximum of three (3) delegates of the Union will be permitted to annually use a pool of paid time-off, not to exceed a total of ten (10) working days in any one fiscal year, for the purpose of attending State and International conventions. The Union will

provide the City with the name(s) of the delegate(s) selected to use the Convention time-off under this section and the Union must provide the dates and locations of any such conventions for which a leave of absence under this section is requested at least six (6) weeks in advance of the convention so that the department can make appropriate arrangements. Requests for use of this paid leave may be denied if the time off will create any scheduling or manpower problems. In addition, up to five (5) duly authorized delegates of the Union may request a leave of absence without pay, not to exceed three (3) weeks per delegate in any one year and no more than two (2) weeks at a time, for the purpose of attending conventions and training seminars of the Union. Requests for this unpaid leave shall be submitted at least one month prior to commencement of the leave and said requests will not be unreasonably denied.

Section 10.17. Educational Leave. An employee may request an educational leave of absence without pay to take a course or courses in a field related to the work assignment or career ladder direction of said employee. The City's existing tuition refund program shall be continued for the term of this Contract.

Section 10.18. Meetings Leave. The Union shall have the right to designate one (1) representative, authorized with pay for time he/she would have otherwise been working, to attend any formal meetings and/or hearings of any sub-divisions of the governing bodies of the City, including City Commission meetings, when a matter relating to the Union is on the agenda for such meeting and if prior notice to the representative's supervisor has been given.

Section 10.19. Union Bulletin Boards. The City will make available one (1) enclosed bulletin board for the posting of official Union notices at each of the following locations, and the Union will limit the posting of Union notices to such bulletin boards:

- 1) Public Works Operations- 451 Dade Boulevard
- 2) Sanitation - 140 MacArthur Causeway
- 3) Parking Department Shop - 140 MacArthur Causeway
- 4) Fleet Management - 140 MacArthur Causeway
- 5) Parks Maintenance Division, 2100 Meridian Avenue
- 6) Flamingo Park
- 7) Fire Department Service Area
- 8) Meter Parking – 1837 Bay Road
- 9) City Police Station

- 10) City Hall
- 11) Recreation Centers (provided AFSCME pays the cost of the new board(s))

Section 10.20. Labor Management Committee. In order to strengthen the parties' labor-management relations, the AFSCME agrees to participate with the City in labor-management committees to address the issues in Departments. Such committees may be requested by the AFSCME or by the City (through the City Manager, Department Directors, or designees) to meet at mutually accepted times. The parties agree that uniforms will be discussed through such Labor Management Committees.

ARTICLE 11
DRUG AND ALCOHOL TESTING

Section 11.1. The City and the Union recognize the employee substance and alcohol abuse has an adverse impact on City government, the image of City employees, the general health, welfare and safety of employees, and to the general public at large. Therefore, it is in the best interest of the parties to negotiate over the subject of drug and alcohol testing.

Section 11.2. Using, selling, possessing or being under the influence of drugs or controlled substances while at work is prohibited. Employees are further prohibited from consuming alcohol and drugs on duty and/or abusing alcohol and drugs off duty to the extent that such use and/or abuse tends to have an effect upon the performance of their job functions.

Section 11.3. The City may require any employee to submit to a blood analysis, urine analysis and/or Breathalyzer when it has a reasonable suspicion as defined in Florida Statutes 440.102 (N) that an employee is under the influence of or using alcohol, drugs or narcotics and/or when an employee has caused, contributed to or been involved in an accident (i.e., automobile or other injury).

Section 11.4. In the event a urine specimen is tested as positive, a portion of that sample will be subjected to a second test at the employee's request and at the employee's expense. If the second test is negative, the employee will be reimbursed by the City.

Section 11.5. At the conclusion of the drug and alcohol testing, the City may take whatever action, if any, it deems appropriate. In the event that said action is in the form of discipline, the employee may grieve said discipline through the contractual grievance/arbitration procedure.

Section 11.6. The parties agree that an employee's refusal to submit ("refusal to submit" includes adulterating a sample or submitting a false sample) to drug or alcohol testing in accordance with the provisions of this Article may result in disciplinary action being taken against the employee up to and including dismissal.

Section 11.7. Drug/Alcohol Random Testing. It is important to the safety and welfare of employees and the public that bargaining unit members not be impaired by alcohol while on duty nor use illegal drugs. To demonstrate the commitment of the City and the Association to this notion, employees will be subject to random testing during the term of this Agreement. Employees will be chosen from a blind list by the Human Resources Department or its designee. Those employees who have a CDL license and are in the CDL Drug Testing Pool will not be part of the AFSCME Drug Testing Pool since the employees who hold a CDL license are already being randomly tested. In other words, all AFSCME employees will be in either the CDL Random Drug Testing Pool or the AFSCME Random Drug Testing Pool.

Section 11.8. Last Chance Agreement. Employees testing positive may be offered the opportunity to enter into a "Last Chance Agreement" (for a maximum duration of 2 years, except in extenuating circumstances) to continue their employment. The Agreement shall require participation in a rehabilitation program and such other requirements as set forth by the City. The City reserves the right to terminate an employee without providing him/her with a Last Chance Agreement, if the incident giving rise to the positive drug test involved threatening or violent behavior or conduct so disgraceful that it causes substantial embarrassment to the Administration. Employees under a Last Chance Agreement who test positive shall be terminated from employment with the City and this is not grievable under the grievance procedure. Employees may be given no more than one (1) chance for substance abuse rehabilitation during employment with the City.

ARTICLE 12

SAVINGS

In the event any article, section, or portion of this Contract should be held invalid and unenforceable by any court or higher authority of competent jurisdiction, such decision shall apply only to the specific article, section, or portion thereof specified in the decision, and upon issuance of such decision, the City and the Union agree to immediately negotiate a substitute for the invalidated article, section, or portion thereof.

ARTICLE 13
ENTIRE CONTRACT

The parties acknowledge that during the negotiations which resulted in this Contract, each had the right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Contract. Therefore, the City and the Union, for the duration of this Contract, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered or not referred to or covered in this Contract.

ARTICLE 14
TERM OF CONTRACT

This Contract shall be effective as of date of ratification, and shall remain in full force and effect through the 30th day of April, 2007.

It shall automatically be renewed from year to year thereafter unless either party shall notify the other in writing one hundred twenty (120) days prior to the anniversary date that it desires to modify this Contract.

Any such notification of a desire to open negotiations shall include specific articles proposed for renegotiations, and only such articles shall be mandatorily negotiated.

This Contract shall remain in full force and effect during the period of negotiations, unless either party gives the other party at least ten (10) days written notice of its desire to terminate this Contract.

Executed by the parties hereto on the _____ day of _____ 2004, by the Mayor and City Clerk.

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
LOCAL 1554 (AFSCME)**

CITY OF MIAMI BEACH, FLORIDA

By: _____

Elizabeth Judd
Field Staff Representative

By: _____

Jorge M. Gonzalez
City Manager

Approved by Vote of the
City Commission _____, 2004

David Dermer
Mayor

Attest: _____

City Clerk

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Donald Ryan 12/7/04
City Attorney Date

**AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES
AFSCME LOCAL 1554**

ELECTION OF REMEDY FORM

Grievance No. (if applicable) _____

This form must be completed and signed prior to the second step of the grievance procedure, or at the time when appeal to the Hearing Examiner is filed.

Employee must elect, sign, and date only one of the two following choices:

1. _____ I/We elect to utilize the Grievance Procedure contained in the current Contract between the City of Miami Beach, Florida, and AFSCME Local 1554. Except as provided in number two (#2) below the Union has the exclusive right to represent all employees and to control the submission of grievances to arbitration.

Signature

Date

2. _____ I/We elect to utilize another forum for my/our grievance, and in doing so, I/we permanently waive my/our contractual right to the Grievance Procedure contained in the current Labor Contract between the City of Miami Beach, Florida, and AFSCME Local 1554.

Signature

Date

If Number 1 is elected, sign if you wish to authorize the following:

I/We hereby authorize AFSCME Local 1554 to process the attached grievance on my/our behalf.

Signature

Date

Addendum: Hearing Examiner Rules

HEARING EXAMINER RULES

SECTION 1: REQUEST FOR HEARING: Any member of the bargaining unit may appeal from disciplinary action within ten (10) days after the delivery or mailing to him/her of such written notice, by filing a written request for a hearing to the Hearing Examiner or his/her designee. If the tenth day falls on a Saturday or Sunday, he/she will have the ability to file for an appeal on the following Monday.

SECTION 2: DISCIPLINARY HEARINGS:

- (a) The City Manager or his/her designee not later than ten (10) days after receipt of such appeal, shall fix a place and time for holding a public hearing within a reasonable time thereafter. Written notice of such time and place shall be delivered or mailed promptly to both the Appellant and the Appointing Officer.

Only the Hearing Examiner may grant a continuance to either party for good and sufficient cause. No continuance shall be granted to either party unless such request for continuance is received in writing by the City Manager or his designee at least ten (10) days prior to the date of said scheduled hearing of appeal.

- (b) The Hearing Examiner may, at the request of the Appointing Officer or the Appellant, call or request any person or records for the purpose of ascertaining the facts.
- (c) The Appointing Officer or a representative designated by him/her, shall have the right to be present at such hearing and to be represented by the City Attorney.
- (d) The Appellant shall have the right to be present at such hearing and to be represented by an AFSCME bargaining agent or an attorney of his/her choice.
- (e) The findings of the Hearing Examiner shall be based upon competent substantial evidence of record.
- (f) The Appointing Officer shall have the burden of presenting evidence to support the truth of the charges as contained in the written notice.
- (g) The Appellant shall have the right to present evidence to refute the charges brought against him/her.

- (h) The Appellant shall have the right to be confronted by his/her accuser, and the Appellant and the Appointing Officer shall each have the right to cross-examine the witnesses of the other.
- (i) After both the Appointing Officer and the Appellant shall have presented their testimony and evidence, the Hearing Examiner shall receive argument in summation. The Appointing Officer shall have both the opening and closing argument.
- (j) After the completion of closing oral argument, the Hearing Examiner shall consider the testimony and evidence presented before the Hearing Examiner to determine the truth or untruth of the charges.
- (k) Within five (5) working days after the completion of the hearing, the Hearing Examiner shall issue his or her findings as to the truth or untruth of the charges in writing. The City Manager or his/her designee shall promptly deliver or mail a copy of such findings to the Appointing Officer and to the Appellant.
- (l) A copy of the written statement given the officer or employee, a copy of any reply thereto, and a copy of the findings of the Hearing Examiner shall be filed as a Public Record in the Human Resources Department.